

PROGRESS REPORT NO. 2

MICHIGAN COURT OF APPEALS DELAY REDUCTION PLAN

November 20, 2002

Work Group Members:

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I. OVERVIEW

A. Statement of the Problem

On March 8, 2002, the Judges of the Court of Appeals unanimously adopted an ambitious delay reduction program. The problem facing the Court related to cases that the Court decides by *opinion* rather than by *order*. In 2001, the Court disposed of approximately 7,600 cases. Of these, the Court disposed of 3,100 by opinion. On average, the Court disposed of these opinion cases within 653 days¹ from the date of filing. Further, the Court disposed of only 14.5% of its opinion cases within 12 months of filing and 24.8% of its opinion cases within 18 months of filing. The Judges of the Court unanimously determined that these figures were not within acceptable limits. On August 15, the Court issued its first progress report covering the first six months of 2002. This second progress report covers the first nine months of 2002, with particular emphasis on the months of July, August, and September 2002.

B. Goals and Objectives

On March 8, the Judges of the Court adopted an overall long-range goal and a number of shorter-term objectives designed to meet that goal. The long-range goal was to dispose of 95% of all the Court's cases within 18 months of filing, commencing October 1, 2003. To achieve this goal, the Court determined that it would first need to reduce the average time it takes to process an opinion case through the Court from 653 days to approximately 498 days. The Court then determined that it would:

- Reduce the average wait in the Judicial Chambers from its 2001 level of 60 days to 49 days, a reduction of approximately 18.33%;
- Reduce the average wait in the "Warehouse" from its 2001 level of 271 days to 212 days, a reduction of approximately 21.77%;
- Reduce the average wait at Intake from its 2001 level of 261 days to 176 days, a reduction of approximately 32.56%.

Overall, these actions would, if successful, reduce the average time it takes to process an opinion case through the Court by approximately 23.73%. To achieve this overall reduction, the Court determined to take a number of individual actions designed to reduce delay

- In the Judicial Chambers by setting targets for the disposition of specific types of cases;
- In the Warehouse by more quickly moving certain types of cases to the Judicial Chambers through the coupling of summary panels with complex case call panels, the use of volunteer summary panels, and the assignment of certain summary disposition appeals and criminal appeals without research reports;

¹ In previous reports, this figure was 654 days. The calculations for these previous reports were done manually. The staff of the Court has now designed and implemented a computer program that significantly increases the accuracy and availability of these data. Consequently, there are some variations from the previously reported, manually calculated figures. In the vast majority of the instances, these variations are not large. The figures generated by the Court's computer program are used throughout the balance of this progress report, both to update the data for 2001 and to provide the new data for 2002.

- And at Intake by shortening of the time limits in certain of the court rules.

In essence, the Court's approach has three prongs. First, the Court set very aggressive targets for disposing of cases once they reach the Judicial Chambers. Second, the Court, through a number of mechanisms, set equally aggressive targets for moving cases much more quickly out of the Warehouse, basically by moving these cases into the Judicial Chambers at a considerably accelerated pace. Third, the Court proposed a number of changes in the Court Rules, to become effective September 1, 2003, to shorten the time in Intake. The Court emphasizes that these rule changes would become effective *only* if the Court itself was successful in achieving its objective under the first two prongs of its effort. The Court designed these actions to take effect over the summer and fall of this year, through the fall of 2003, and extending to the commencement of FY 2004 on October 1, 2003.

C. The Four Stages For Processing An Appeal

1. Intake

During *Intake*, initial papers are filed with the Clerk's Office, a court file is opened and a docket number assigned, a staff attorney reviews the filing for conformance with the court rules and jurisdictional requirements, the file is forwarded to the district clerk's office, a transcript order is filed, a stenographer's certificate is filed, a court reporter's notice of filing transcript is filed, the appellant's brief is filed, the appellee's brief is filed, the trial court transmits the record upon request, and the case is noticed for submission to a panel of Judges of the Court. The average period in the *Intake* stage in 2001 was 261 days for all types of cases that the Court disposed of by opinion.

2. Warehouse

When briefing has been concluded and the lower court record has been filed with the Court, the case is ready to be forwarded to the central staff of research attorneys for preparation of a research report to the Judges. This stage is titled the *Warehouse*. It extends from the date the case is ready for research, through the date it is sent to research, until the date it is actually assigned to a research attorney. Other than preliminary screening to assist in assigning the case to a research attorney, nothing substantive happens to the case when it sits in the *Warehouse*. The average wait in the *Warehouse* stage in 2001 was 271 days for all types of cases that the Court disposed of by opinion.

3. Research

When a case is sent to *Research*, cases with priority status are assigned first to attorneys; all others are assigned on a first-in, first-out basis. After preparation of a research report, the supervisor assigns a degree of difficulty evaluation to the case, which represents the complexity of the case and which is later used to balance the workload among the three Judges on the case call panel. The average time at the *Research* stage in 2001 was 61 days for all types of cases that the Court disposed of by opinion.

4. Judicial Chambers

When cases have been reported on by *Research* or have been screened as eligible for submission to the Judges without a report, they are scheduled for submission on case call. After

transmission of the briefs, records, and research reports to the *Judicial Chambers*, a case call panel will listen to oral argument for two or three days each month. Oral argument is generally heard in all cases in which the parties have met the requirements of the court rules or as ordered by the Court. Following argument, the panels conference on site and discuss the disposition of the cases. Subsequently, each chambers works to draft, circulate, and file opinions in outstanding cases. The average time in the *Judicial Chambers* stage in 2001 was 60 days for all types of cases that the Court disposed of by opinion.

II. RESULTS THROUGH SEPTEMBER OF 2002

A. Processing Times

1. Overall

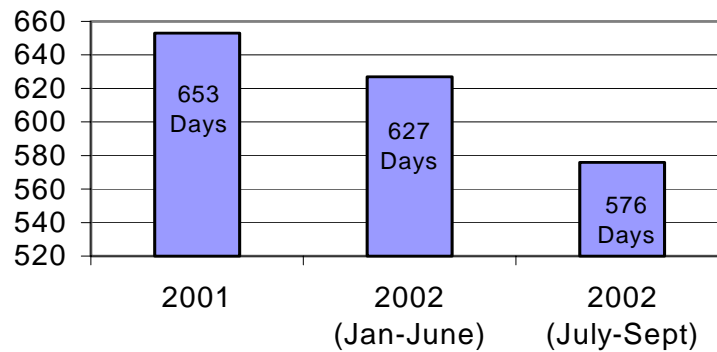
As Chart 1 shows, in 2001 the overall time it took to process an opinion case through the Court was 653 days.

- In the period from January to June of 2002, the Court reduced this time to 627 days. This was a reduction of 26 days from the 2001 levels, an overall percentage reduction of 3.98%.
- In the period from July to September of 2002, the Court reduced this time to 576 days. This was a reduction of 77 days from the 2001 levels, an overall percentage reduction of 11.79%.
- Graph 1 shows these reductions on a comparative basis.

Chart 1

	2001	2002 Jan-June	2002 July - Sept
Intake	261	247	229
Warehouse	271	276	243
Research	61	61	65
Judicial Chambers	60	43	39
Totals	653	627	576

Graph 1
Overall Time In Processing

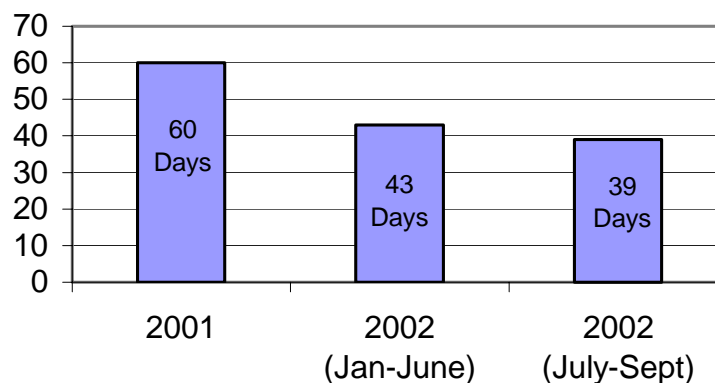


2. *Judicial Chambers*

In 2001, the time it took to process an opinion case through the Judicial Chambers was 60 days.

- In the period from January to June of 2002, the Court reduced this time to 43 days. This was a reduction of 17 days from the 2001 levels, a percentage reduction of 28.33%.
- In the period from July to September of 2002, the Court reduced this time to 39 days. This was a reduction of 21 days from the 2001 levels, a percentage reduction of 35%.
- Graph 2 shows these reductions on a comparative basis.

Graph 2
Processing Time In Judicial Chambers

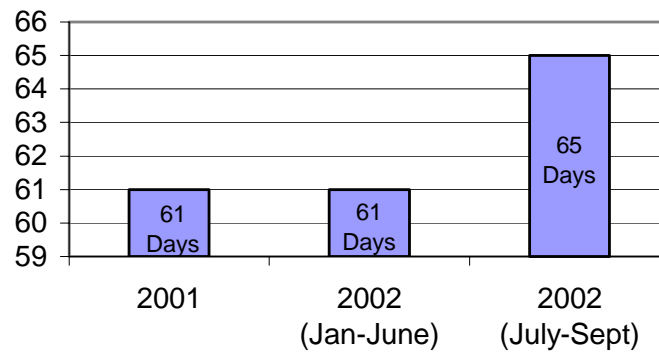


3. *Research*

In 2001, the time it took to process an opinion case through Research was 61 days.

- In the period from January to June of 2002, this time remained at 61 days.
- In the period from July to September of 2002, this time increased to 65 days. This was an increase of 4 days from the 2001 levels, a percentage increase of 6.55%.
- Graph 3 shows this increase on a comparative basis.

Graph 3
Processing Time In Research

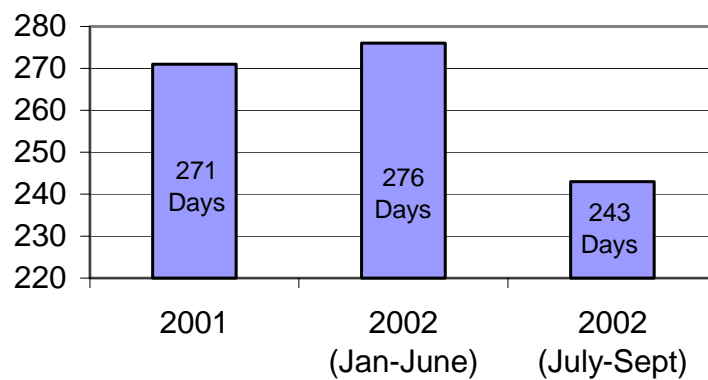


4. *Warehouse*

In 2001, the time spent in the Warehouse was 271 days.

- In the period from January to June of 2002, this time increased to 276 days. This was an increase of 5 days from the 2001 levels, a percentage increase of 1.84.
- In the period from July to September of 2002, the Court reduced this time to 243 days. This was a reduction of 28 days from the 2001 levels, a percentage reduction of 10.33%.
- Graph 4 shows these reductions on a comparative basis.

Graph 4
Processing Time In The Warehouse

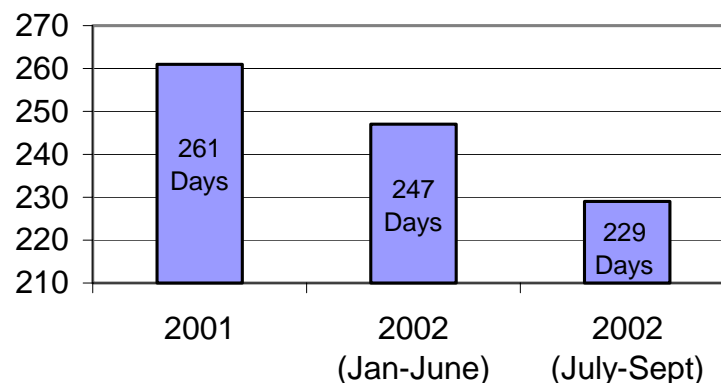


5. *Intake*

In 2001, the time it took to process an opinion case through Intake was 261 days.

- In the period from January to June of 2002, this time was reduced to 247 days. This was a reduction of 14 days from the 2001 levels, a percentage reduction of 5.36%.
- In the period from July to September of 2002, this time was reduced to 229 days. This was a reduction of 42 days from the 2001 levels, a percentage reduction of 16.09%. Time in *Intake* for cases disposed by opinion in 2002 would have occurred at least one year before disposition. Similarly, cases disposed in 2001 would have been in *Intake* approximately one year before that. The reduction in time spent in *Intake* between the two groups of cases could be attributable to the speedier processing of pending applications for leave by district commissioners, increased focus of district clerks on streamlining the process of securing overdue transcripts, and increased time in which staff can make full use of available case management tools as overall case filings declined.
- Graph 5 shows these reductions on a comparative basis.

Graph 5
Processing Time In Intake



B. Case Differentiation

Chart 2 shows the overall situation for cases that the Court disposed of by opinion in 2001, arrayed according to major case types.

CHART 2
2001

	Overall Average	Regular/ Complex	Summary	Non- Expedited	Expedited	Custody/TPR
Intake	261	271	229	280	192	187
Warehouse	271	290	215	331	60	56
Research	61	61	62	63	56	52
Judicial Chambers	60	72	27	66	42	29
Total	653	694	533	740	350	324

Chart 3 shows the overall situation for cases that the Court disposed of by opinion from January to June of 2002, arrayed according to major case types. Again, on an overall basis the Court reduced its total processing time from 653 days to 627 days. This was an overall percentage reduction of 3.98%.

CHART 3
Jan-June 2002

	Overall Average	Regular/Complex	Summary	Non- Expedited	Expedited	Custody/TPR
Intake	247	257	209	262	188	186
Warehouse	276	293	210	327	66	67
Research	61	57	79	63	57	57
Judicial Chambers	43	49	20	47	27	20
Total	627	656	518	699	338	330

Chart 4 shows the overall situation for cases that the Court disposed of by opinion from July to September of 2002, arrayed according to major case types. Again, on an overall basis the Court reduced its total processing time from 653 days to 576 days. This was an overall percentage reduction of 11.79%.

CHART 4
July-Sept 2002

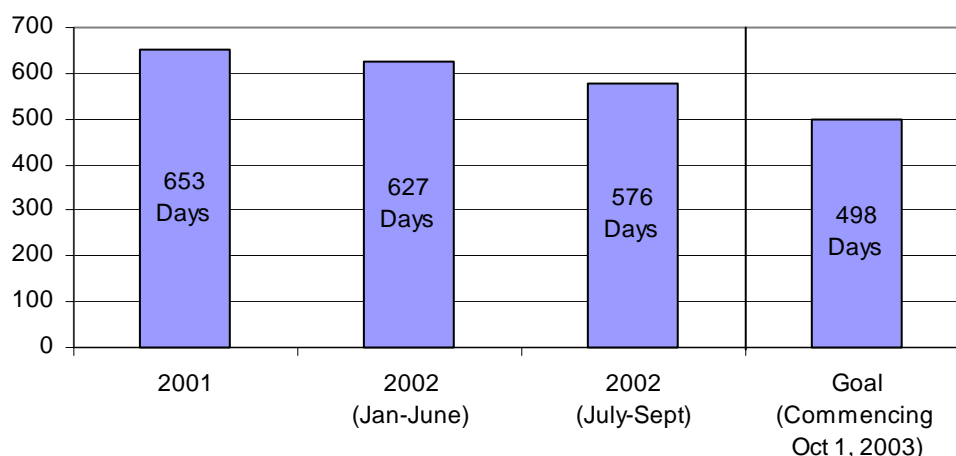
	Overall Average	Regular/Complex	Summary	Non- Expedited	Expedited	Custody/TPR
Intake	229	250	201	248	161	158
Warehouse	243	286	185	298	50	50
Research	65	63	68	64	70	71
Judicial Chambers	39	53	19	42	26	22
Total	576	652	473	652	307	301

C. Relationship To Goals

1. Overall

On an overall basis, the Court's delay reduction plan set October 1, 2003, as the date for commencing the full 155 day reduction of the time it takes to process an opinion case from filing to disposition. As noted above, in 2001 the overall time it took to process an opinion case through the Court was 653 days. From January to June of 2002, the Court reduced this time to 627 days. From July to September of 2002, the Court reduced this time to 576 days. Graph 6 shows the Court's progress toward meeting its overall goal.

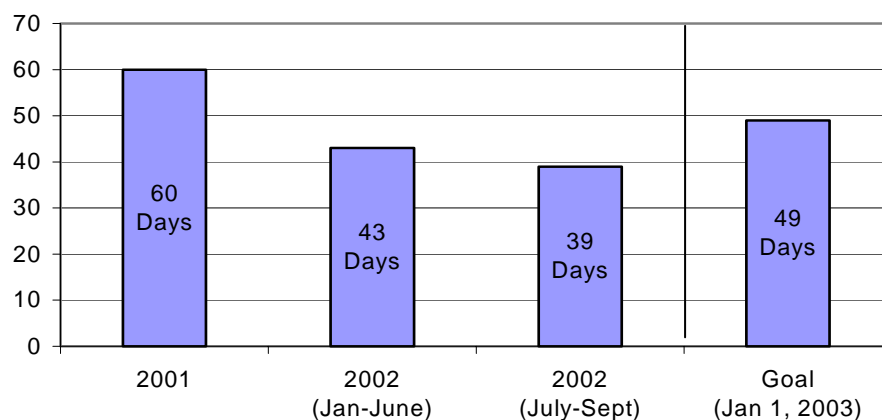
Graph 6
Overall Progress Toward Goal



2. *Judicial Chambers*

Commencing immediately and to be completed by January 1, 2003, the Court's delay reduction plan called for a 31 day reduction of the time it takes to process an opinion case through the Judicial Chambers. As noted above, in 2001 the time it took to process an opinion case through the Judicial Chambers was 60 days. From January to June of 2002, the Court reduced this time to 43 days. From July to September of 2002, the Court reduced this time to 39 days. Graph 7 shows the Court's progress toward meeting its goal with respect to the Judicial Chambers. As Graph 7 illustrates, the Court has already met, and exceeded, its goal with respect to processing time in the Judicial Chambers.

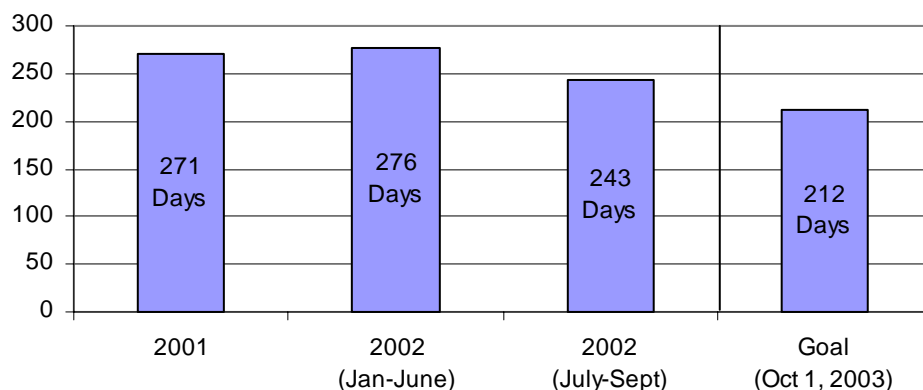
Graph 7
Judicial Chambers Progress Toward Goal



3. *Warehouse*

Commencing immediately and to be completed by October 1, 2003, the Court's delay reduction plan called for a 54 day reduction of the wait in the Warehouse. As noted above, in 2001 the wait in the Warehouse was 271 days. From January to June of 2002, the wait increased to 276 days. From July to September of 2002, the Court reduced this time to 243 days. Graph 8 shows the Court's progress toward meeting its goal with respect to the Warehouse.

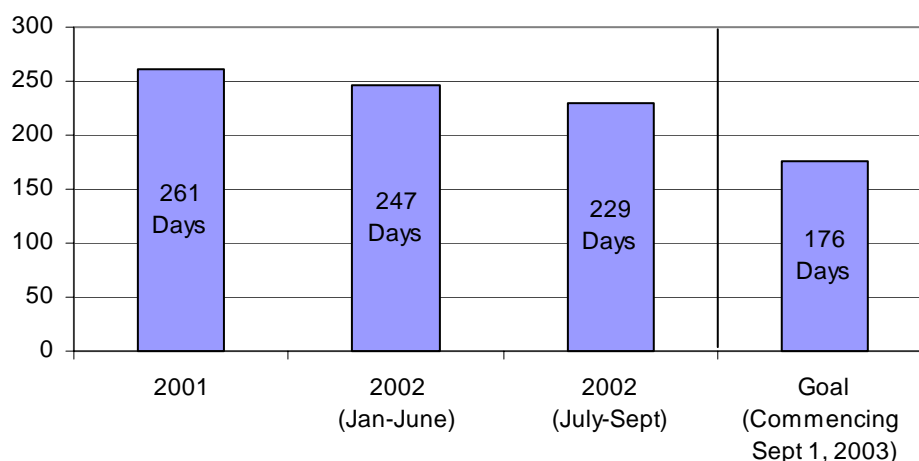
Graph 8
Warehouse Progress Toward Goal



4. *Intake*

Commencing September 1, 2003,² the Court's delay reduction plan called for an 87 day reduction of the time it takes to process an opinion case through Intake. As noted above, in 2001 the time it took to process an opinion case through Intake was 261 days. From January to June of 2002, this time was reduced to 247 days. From July to September of 2002, this time was reduced to 229 days. Graph 9 shows the Court's progress toward meeting its goal with respect to Intake.

Graph 9
Intake Progress Toward Goal



5. *Research*

The Court's delay reduction plan did not call for a reduction in the time it takes to process a case through Research. Essentially, while the time it takes to do the research necessary to prepare an opinion case for case call may fluctuate, depending upon the experience and skill level of the person doing the research as well as upon the degree of difficulty of the case, the current average time — although it may be reduced somewhat — approaches acceptable limits. The basic problem in Research is the availability of a sufficient number of attorneys to do the research itself. The current staffing levels mean that the Research Division, by itself, cannot appreciably reduce the wait in the Warehouse, whose very existence derives from the fact that the Research Division is inadequately staffed. Simply put, if the Court were able to increase the number of attorneys in the Research Division, it would reduce the wait in the Warehouse.

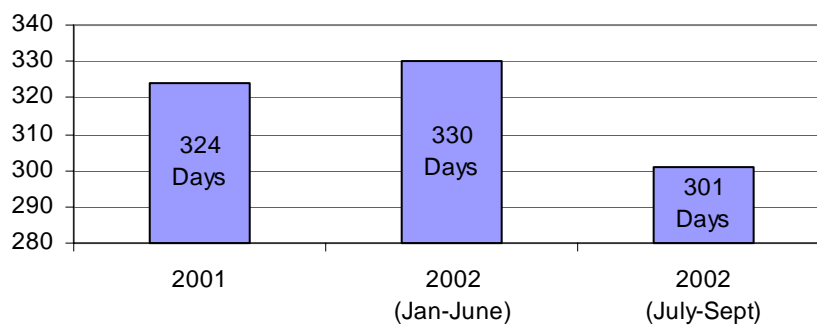
Recognizing this fact, the Delay Reduction Work Group recommended that the Court seek funding in FY 2004 for an additional seven to ten attorneys in the Research Division. This would require an additional appropriation of approximately \$470,000 to \$670,000. Were this appropriation to be available on October 1, 2003, the Work Group estimated that the Court could then begin to dispose of 95% of call cases filed with the Court within 18 months of filing. Essentially, given such additional funding, by the end of FY 2004, there would be no Warehouse and the average time to decide an opinion case would be approximately 300 days.

² The date on which the proposed changes in the court rules would become effective.

D. Dependency Appeals

The Court has also directed special attention to dependency appeals. Those are appeals arising from trial court orders terminating parental rights due to neglect or abuse and appeals arising from trial court orders or opinions involving custody of minor children in domestic relations cases. In 2001, it took 324 days, on average, to dispose of such cases by opinion. The Court's delay reduction plan will reduce this time, on average, by 12 days. The Court has made further recommendations that will reduce this time by an additional 28 days. These recommendations include an expansion of the Court's contract attorney program by adding an additional six to eight contract attorneys, at an estimated \$35,000 to \$50,000 in FY 2004. This action, alone, will reduce the time it takes to dispose of dependency appeals by 21 days. Further, as Graph 10 shows, the Court has already significantly reduced the time it takes to dispose of such appeals.

Graph 10
Dependency Appeals



III. CONCLUSION

On March 8, 2002, the Judges of the Court of Appeals set an achievable, albeit difficult, goal. That goal was to dispose of 95% of all appeals filed with the Court within 18 months of filing. The Court's delay reduction plan, with the exception of changes to the court rules that would reduce the time a case spends in Intake, commenced on an overall basis in July of 2002. During the months of July, August, and September:

- The Court reduced the overall time it takes to dispose of an opinion case from the 2001 level of 653 days to 576 days, a reduction of 77 days. The Court's objective is to reduce the time it takes to dispose of an opinion case to 498 days commencing fully on October 1, 2003. Thus, the Court will need to shorten the time it takes to dispose of an opinion case by another 78 days in order to meet its overall objective.
- The Court reduced the time a case spends in the Judicial Chambers from the 2001 level of 60 days to 39 days, a reduction of 21 days. The Court therefore achieved — indeed, it exceeded — its objective of reducing the time in the Judicial Chambers to 49 days by January 1, 2003. Thus, the Court has met, and exceeded, its objective with respect to the Judicial Chambers three months *prior* to its target date.
- The Court reduced the time a case waits in the Warehouse from the 2001 level of 271 days to 243 days, a reduction of 28 days. The Court's objective is to reduce the wait in

the Warehouse to 212 days by October 1, 2003. Thus, the Court will need to reduce the time a case waits in the Warehouse by another 31 days in order to meet its objective.

- The time a case spends in Intake has been reduced from the 2001 level of 261 days to 229 days, a reduction of 32 days. The Court's objective is to reduce the time a case spends in Intake to 176 days. Thus, through the adoption of changes in the court rules, this time must be further reduced by another 53 days in order to begin meeting that objective by September 1, 2003.
- The Court recognized in March of 2002 that, given existing budget constraints, it was not realistic to expect that it could add new attorneys to its Research Division in either FY 2002 or FY 2003. Indeed, the Court has actually experienced significant budget *reductions* during both of these fiscal years. Nevertheless, in order to meet its overall goal of disposing of 95% of all appeals within 18 months of filing, the Court will, commencing October 1, 2003, need to further reduce the time it takes to process an opinion case to approximately 300 days. There is only one way to meet that objective and that is by adding attorneys to the Research Division and thereby drastically reducing or eliminating the Warehouse.
- The Court has reduced the overall time it takes to process a dependency appeal from the 2001 level of 325 days to 301 days, a reduction of 23 days. Adding an additional six to eight contract attorneys, at an estimated cost of \$35,000 to \$50,000 in 2004, would further reduce this time by 21 days.

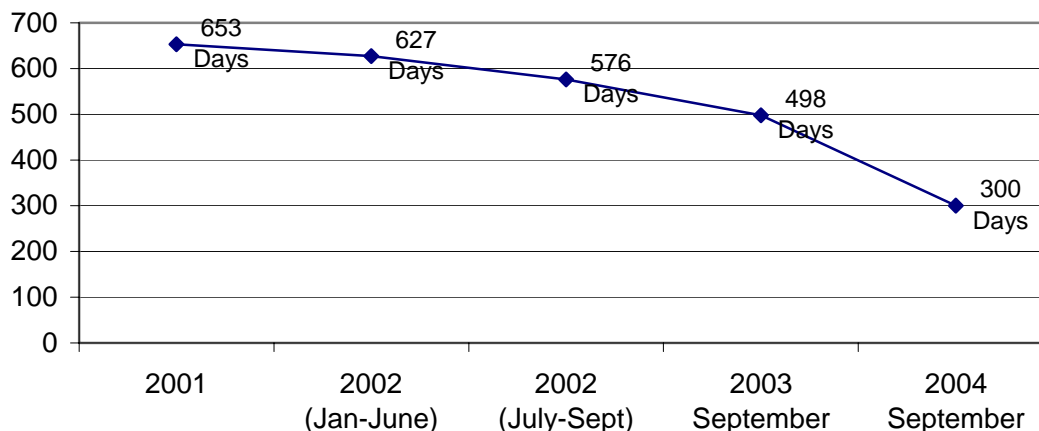
Chart 5 summarizes the further progress that will be needed to meet the Court's objective of reducing the time it takes to dispose of an opinion case from the 2001 level of 653 days to 498 days commencing fully on October 1, 2003.

CHART 5

	2001	July-Sept 2002	Improvement To Date	Goal	Improvement Needed
Intake	261	229	32	176	53
Warehouse	271	243	28	212	31
Research	61	65	(4)	61	4
Judicial Chambers	60	39	21	49	(10)
Total	653	576	77	498	78

Graph 11 illustrates the situation from a different perspective, showing the Court's starting point in 2001, the progress the Court made from January through June of 2002, the further progress the Court made from July through September of 2002, the goal for September of 2003, and the ultimate goal for September of 2004.

Graph 11
Progress Toward Goal



As we said in our first progress report, the Court has established a solid base upon which it can build over the next year so that it will be in a position to achieve its long-range goal of deciding 95% of all appeals within 18 months of filing. It is essential that we achieve this goal; as Novak and Somerlot³ point out:

A long-standing criticism of American courts is that litigation takes too long and costs too much. Recent studies document the public's perception that high costs and excessive delays hinder access to the courts, result in unfair advantages to certain litigants, and interfere with the equal distribution of justice. This perception is not illusory. Congestion in our courts causes palpable injury to litigants, the public, and the justice system itself.

From the injured person forced to wait years for compensation to the executive unable to finalize a business transaction, the impact of delay is acutely felt as bills mount, commercial and personal opportunities diminish, and future plans are placed on hold. A child awaiting adoption, an accused awaiting trial, and a crime victim and her family experience all too concretely the anxiety produced by the prolonged uncertainty of the outcome of litigation. Moreover, the fact-finding process suffers because the potential for error multiplies as the time between the original event and the judicial determination grows.

Delay on appeal exacerbates these injuries. Long periods between judgment and disposition on appeal increase the chances that funds will become insufficient to cover the full amount of damage awards. The cost of

³ R. Novak and D. Somerlot, *Delay on appeal: a process for identifying causes and cures* (1990).

business transactions goes up, while the predictability of business decisions declines. Additional strain is placed on family relationships as marriage dissolution, custody, and adoption decisions are reviewed and possibly revised. When further lower court proceedings are necessary, appellate delay adds to the potential that witnesses will not testify further and evidence will be lost. Unresolved legal issues and important questions of public policy leave litigants, lower courts, and all citizens without adequate guidance.

There is no more important task before the Court of Appeals than significantly reducing delay on appeal. It is part of our core mission and is, and shall remain, the first priority of the Court.